

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 4:09-CR-72-D

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, hereby opposes the Motion to Strike Untimely Objections to Presentence Report ("Motion to Strike") filed by defendant John Kent Colvin ("Defendant") on December 22, 2010. A proposed order is filed herewith.

1. On June 11, 2010, following a two-week trial in this investment fraud case, the jury convicted Defendant on all counts - conspiracy to commit mail fraud under 18 U.S.C. § 371 and five mail fraud counts under 18 U.S.C. § 1341. Upon conviction, Defendant was ordered detained.

2. On November 1, 2010, the Probation Office issued its draft pre-sentence report ("Draft PSR") in this case. Among other things, the report described an Offense Level of 43, which corresponds to life imprisonment. At the time the Draft PSR was issued, sentencing was set for December 6, 2010.

3. On November 23, 2010, the United States moved the Court to continue the sentencing date. In doing so, the United States explained that it needed more time to make objections to the Draft PSR:

The draft PSR was issued on the day the undersigned Assistant United States Attorney began trial in the related case United States v. Bartko. As a result, the United States has not had an opportunity to carefully review the draft PSR and object where necessary.

United States' Motion to Continue Sentencing, filed November 23, 2010, ¶ 4.

4. The next day, the Court granted the United States' motion and set sentencing for the Court's January term. Sentencing is specifically set for Wednesday, January 12, 2011.

5. On December 20, 2010, the United States provided additional case information to the U.S. Probation Officer and made two objections requesting enhancements under USSG §2B1.1 that had not been included in the Draft PSR.

6. Counsel for Defendant then contacted the undersigned AUSA to obtain the United States' position on a motion to strike the objections. The undersigned AUSA offered to consent to any reasonable continuance Defendant desired and needed in order to prepare for sentencing. Defendant did not accept this offer. Instead, the current Motion to Strike was filed.

7. The United States respectfully requests that the Motion to Strike be denied for two reasons. First, as described above,

following the 14-day period for PSR objections described in the Local Rules, the United States requested a continuance of the sentencing hearing in order to review the Draft PSR and file objections, and the Court granted that motion. Second, Defendant has made no showing of prejudice due to the timing of the United States' objections.

Respectfully submitted, this 3rd day of January, 2011.

GEORGE E. B. HOLDING
United States Attorney

BY: /s/ Clay C. Wheeler
CLAY C. WHEELER
State Bar No. 38713

Assistant United States Attorney
United States Attorney's Office
310 New Bern Avenue, Suite 800
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4487
E-mail: clay.wheeler@usdoj.gov

CERTIFICATE OF SERVICE

This certifies that on this 3rd day of January, 2011, I have served a copy of the foregoing on the defendant in this action by electronic filing as follows:

Attorney for Defendant Colvin:

Paul K. Sun, Jr.
Ellis and Winters

/s/ Clay C. Wheeler
CLAY C. WHEELER